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SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1966

No. 257

IN THE MATTER OF

The Application of MATTHEW J. REDDEN,

Petitioner,

For an Order under Article 78 of the Civil Practice Act and Article 78 of the Civil Practice Law and Rules,

against

MICHAEL J. MURPHY, as Police Commissioner of the City of New York,

Respondent,

and

NEW YORK CITY MUNICIPAL CIVIL SERVICE COMMISSION,

Respondent.

MEMORANDUM IN OPPOSITION OF RESPONDENTS, MICHAEL J. MURPHY, *ET ANO.*

J. LEE RANKIN
Corporation Counsel
Attorney for Respondents

SEYMOUR B. QUEL
JESSE I. LEVINE,
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Petitioner brought a proceeding to review and annul the determination of the Police Commissioner finding petitioner guilty of violations of departmental rules and regu-

lations after a hearing, and further, seeking to compel the Commissioner to appoint petitioner to the office of Captain, New York City Police Department.

The petition was properly dismissed on the grounds that the relief sought with respect to the disciplinary hearing was barred by the statute of limitations, Civil Practice Act, Section 1286; *Matter of Mahony* v. *Conway,* 281 App. Div. 1057 (3d Dept., 1953), 121 N. Y. S. 2d 556; *Matter of Hall* v. *Leonard,* 260 App. Div. 591, 23 N. Y. S. 2d 360, aff'd 285 N. Y. 719 (1941), 34 N. E. 2d 893; *Matter of Green* v. *City Civil Service Commission,* 4 Misc 2d 186 (Sup. Ct., N. Y. Co., 1956), 157 N. Y. S. 2d 851; and that the appointment of petitioner to the position of Captain, more than four years after the expiration of the eligible list, was a legal impossibility. *Matter of Turel* v. *Delaney,* 287 N. Y. 15 (1941), 38 N. E. 2d 411; *Matter of Berger* v. *Walsh,* 291 N. Y. 220 (1943), 52 N. E. 2d 105; *Matter of Cash* v. *Bates,* 301 N. Y. 258 (1950), 93 N. E. 2d 835; *Matter of Singer* v. *Schechter,* 17 A D 2d 204 (1st Dept., 1962), 233 N. Y. S. 2d 483.

The opinion of Supreme Court, New York County, affirmed by the Appellate Division, First Department, without opinion, makes it absolutely clear that the grounds for dismissal of the petition in the State Courts were independent of the allegedly constitutional questions raised by petitioner. Such independent grounds for dismissal are adequate under New York law, as indicated above. The alleged Federal questions raised by petitioner were not considered in the State Courts, nor should they have been so consid-

ered. The petition is patently without merit. *Lynch, et al.* v. *New York ex rel. Pierson,* 293 U. S. 52 (1934).

July 18, 1966.

Respectfully submitted,

J. Lee Rankin
Corporation Counsel
Attorney for Respondents

Seymour B. Quel,
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